

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

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| In the Matter of:           | ) |              |
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| Opinion requested by:       | ) | No. 78-008-A |
| James L. Evans,             | ) | Oct. 3, 1978 |
| United Transportation Union | ) |              |
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BY THE COMMISSION: James L. Evans of the United Transportation Union has asked a number of questions concerning Chapter 6 of the Political Reform Act and the regulations adopted pursuant to that chapter. The United Transportation Union employs two lobbyists, James L. Evans and James P. Jones. In addition, the Union has a number of employees in its Sacramento office who on occasion engage in lobbying activities. The lobbyists and employees attempt to influence the actions of a number of state agencies including the Legislature, the Public Utilities Commission, the Highway Patrol and the Department of Transportation. The varied and substantial lobbying program of the Union has given rise to a number of questions concerning the reporting obligations of the Union, its lobbyists and its employees.

Specifically, Mr. Evans asks:

(1) What is the correct standard for determining whether a particular state agency should be listed on a lobbyist's registration statement pursuant to Government Code Section 86101(c)?

(2) Whether all the time spent attending an administrative hearing should be counted in determining whether one has become a lobbyist pursuant to 2 Cal. Adm. Code Section 18239 or determining whether an employee has spent 10 percent of his compensated time in lobbying activity pursuant to 2 Cal. Adm. Code Section 18620.

(3) Whether, pursuant to 2 Cal. Adm. Code Section 18239(e)(3)(B), a person becomes a lobbyist by spending 40 hours in administrative testimony before several agencies and one hour in direct contact with officials of those agencies.

(4) Whether the influencing activity and expenses of an employee of a lobbyist employer in connection with lobbying an agency not on the registration statement of the lobbyist employer's lobbyist must be reported.

(5) Whether compensation paid to an employee of a lobbyist employer is reportable by the lobbyist employer's lobbyist when the lobbyist directs the activities of that employee.

(6) Whether any time spent by an agent or employee of an entity should be attributed to another employee of that entity who is directing the activities of the agent or employee for purposes of determining whether the directing employee has qualified as a lobbyist under Government Code Section 82039 and 2 Cal. Adm. Code Section 18239.

#### CONCLUSION

(1) An agency should be listed on a lobbyist's registration statement pursuant to Government Code Section 86101(c) if it is foreseeable the lobbyist will attempt to influence that agency.

(2) All the time spent attending a hearing should be included in determining whether one has become a lobbyist or determining whether an employee has spent 10 percent of his compensated time in lobbying activity.

(3) A person becomes a lobbyist by spending a total of 40 hours in administrative testimony before one or more agencies and a total of one hour in direct contact with the officials of the agency or agencies to which the administrative testimony was directed.

(4) A lobbyist employer must report lobbying activity and expenses of an employee in connection with attempts to influence an agency not listed on the registration statement of the lobbyist employer's lobbyist if the lobbyist employer also qualifies as a \$250 filer pursuant to Government Code Section 86108(b).

(5) A lobbyist is not required to report expenses incurred by the employer for compensation of the employees of the employer who assist the lobbyist.

(6) In determining whether an employee of an entity has become a lobbyist, time spent by an agent or other employee of that entity should be attributed to the

employee only if the agent or other employee acts under the direct supervision or direct orders of the employee in order to aid or promote the employee's lobbying activity.

#### ANALYSIS

(1) Mr. Evans' first question asks what is the threshold for listing an agency on a lobbyist registration statement. Government Code Section 86101(c)<sup>1/</sup> requires that a lobbyist list on his registration statement each state agency the lobbyist will attempt to influence as a substantial or regular portion of his activities. Pursuant to this standard a lobbyist should list on his registration statement all agencies which it is foreseeable the lobbyist will attempt to influence in the period covered by the registration. However, it is not necessary to list agencies with which there is expected to be no substantial contact or where the only contact expected will be in connection with monitoring the activity of the agency. The lobbyists for the United Transportation Union ("UTU") monitor the activities of a number of state agencies in order to keep abreast of upcoming decisions. The experience of the UTU lobbyists has taught that several times a year these agencies will make decisions of interest to the UTU and its members which they will want to attempt to influence.<sup>2/</sup> Because these agencies are likely to regularly make decisions the UTU lobbyists will attempt to influence, they should be disclosed on the lobbyist registration statement. It should be noted, also, that if a lobbyist expects to lobby a particular agency only on one specific decision and the lobbying activity will be substantial, that agency should be listed on the lobbyist registration statement even though the lobbyist may not lobby the agency on a regular basis.

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise noted.

<sup>2/</sup> Some agencies will make many decisions of interest to the UTU, others fewer decisions. How many decisions depends on a number of factors including the agency's procedures and how much of the agency's work is of interest to the UTU.

(2) <sup>3/</sup>The Commission's regulation, 2 Cal. Adm. Code Section 18239, provides alternative tests for determining when one becomes a lobbyist. One test is a time test and the other is a compensation test. With both tests, it is necessary to first determine whether the activity a person is engaging in constitutes influencing or attempting to influence legislative or administrative action.

Similarly, persons who must report pursuant to Sections 86108 and 86109 must report the salary costs of influencing legislative or administrative action on the part of non-lobbyist employees if 10 percent or more of the employee's compensated time involves such activity. 2 Cal. Adm. Code Section 18620(d).

With those requirements in mind, Mr. Evans asks whether all the time spent at a hearing in which a person participates should be taken into account for determining whether a person becomes a lobbyist or whether an employee has spent 10 percent of his compensated time in influencing activity. The alternative to including all the time spent at the hearing would be to include only the time spent actually testifying.

We believe that all the time spent at the hearing should be included. When a person attends a hearing in which he or she will participate, the time spent listening to others speak is usually not idle or wasteful time. The participant will want to know what others have said so that he may rebut that testimony or respond to questions that may have been raised. Attendance at the hearing and listening to what others have said is an integral part of an effective effort to influence the decision in question and for that reason the time spent listening but not testifying cannot be

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<sup>3/</sup> In answering questions 1 through 6, we rely on the Commission's revised lobbying regulations which become effective January 1, 1979. The revised regulations, except in the case of question 5, do not substantively alter the previous regulations insofar as Mr. Evans' questions are concerned. However, some of the relevant section numbers have been changed.

excluded in determining whether a person has become a lobbyist<sup>4/</sup> or whether an employee has passed the 10 percent threshold.

(3) The Commission's regulation, 2 Cal. Adm. Code Section 18239(e)(2)(A)2., provides that a person becomes a lobbyist by:

Spending 40 hours [in any two consecutive calendar months] engaging in administrative testimony<sup>5/</sup> and at least one hour of other direct communication with officials of the agency to whom the administrative testimony is directed;...

Mr. Evans asks whether one becomes a lobbyist if he spends 40 total hours in administrative testimony before several agencies and one total hour in direct contact with officials of those agencies. For example, Mr. Evans' question asks whether a person who spends 20 hours in administrative testimony and one-half hour in direct communications with the Public Utilities Commission and 20 hours in administrative testimony and one-half hour in direct communications with the California Highway Patrol qualifies as a lobbyist under 2 Cal. Adm. Code Section 18239(e)(2)(A)2.

Our intention in adopting 2 Cal. Adm. Code Section 18239(e)(2)(A)2. was to include as lobbyists those persons who spend a substantial amount of time testifying at an agency's formal administrative proceedings and also make private contacts with the officials of the agency. The fact that a person's time is divided among two or more agencies

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<sup>4/</sup> However, the procedure followed by some agencies and legislative committees is such that a person may be required to sit through a number of agenda items in which he has no interest before the item in which he is interested is heard. For purposes of determining whether the time thresholds have been passed, it would be unfair to include time spent sitting through agenda items in which a person has no interest. If such time were included, persons might become lobbyists or employers may be required to report their employees' activities merely because of the peculiar hearing procedures of a particular agency or committee.

<sup>5/</sup> "Administrative testimony" is defined in 2 Cal. Adm. Code Section 18239(e)(3)(B). It does not include testimony before the Legislature or committees of the Legislature.

does not make a person's influencing activity any less substantial. Therefore, it is our opinion that a person becomes a lobbyist even in those situations where the 40 hours of administrative testimony and one hour of direct communication are divided among several agencies.

(4) Mr. Evans' next question concerns the reporting obligations of a lobbyist employer with regard to the activities of a non-lobbyist employee who spends 10 percent or more of his compensated time influencing an agency not listed on the lobbyist's registration statement.

Pursuant to 2 Cal. Adm. Code Section 18600(a), a lobbyist employer is only required to disclose, pursuant to Section 86109, activity and expenses in connection with influencing those agencies which are or should be listed on the registration statement of the employed lobbyist. See Section 86101(c). Therefore, a lobbyist employer has no obligation to report expenses in connection with lobbying activity directed at influencing an agency not on the lobbyist's registration statement.

However, a person or entity may incur reporting obligations independent of status as a lobbyist employer. Under Section 86108(b), a person who spends \$250 or more a month to influence legislative or administrative action must file a disclosure statement similar to that filed by lobbyist employers. See Section 86109. Since a person may spend \$250 in a month to influence legislative or administrative action and also employ a lobbyist, he may have a filing obligation both as a \$250 filer and a lobbyist employer.<sup>6/</sup> And since \$250 filers are not subject to the restriction of 2 Cal. Adm. Code Section 18600(a), reporting for persons filing as both lobbyist employers and \$250 filers is not limited to agencies listed on the lobbyist registration statement. Therefore, UTU will be required to file as a

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<sup>6/</sup> In determining whether a lobbyist employer has passed the \$250 threshold and has filing obligations both as a lobbyist employer and a \$250 filer, amounts paid to a lobbyist (as defined by Section 82045(a)) should not be included. If these amounts were included, the intention of 2 Cal. Adm. Code Section 18600(a) to limit a lobbyist employer's reporting to agencies listed on the lobbyist's registration statement would be frustrated since most lobbyist employers would become \$250 filers by virtue of their payments to lobbyists.

\$250 filer and report the compensation and activity of a non-lobbyist employee if the employee's compensation for his lobbying activities exceeds \$250 in the month. Because 2 Cal. Adm. Code Section 18600(a) does not apply to \$250 filers pursuant to Section 86108(b), the activity and expenses must be reported even if the employee's influencing activity is directed towards an agency not on the lobbyist's registration statement. Even if the employee's reportable compensation is less than \$250 in the month, the UTU has an obligation to report the non-lobbyist employee's activity and expenses if it had a filing obligation under Section 86108(b) because its total expenditures to influence legislative or administrative action including the employee's compensation exceed \$250. However, the obligation to file as both lobbyist employer and \$250 filer does not require the filing of two separate statements. All the required information may be reported on a single statement.

(5) Mr. Evans asks us next whether he must report on his lobbyist statement compensation paid by UTU to an employee of UTU working at his direction. Under 2 Cal. Adm. Code Section 18616, effective January 1, 1979, a lobbyist is not required to report any expense he has not paid. 2 Cal. Adm. Code Sections 18616(a)(2); 18616(c)(2). Therefore, even when the employee of a lobbyist employer is performing work under the direction of his employer's lobbyist, the lobbyist is not required to report the compensation of the employee so long as that compensation is paid by the employer and not the lobbyist.<sup>7/</sup>

(6) Lastly, Mr. Evans has asked whether time spent by an agent or employee of an entity in direct contacts or in preparing information for use by another employee of

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<sup>7/</sup> Under the regulation effective until the end of the year, a lobbyist is required to report any expense incurred by him. 2 Cal. Adm. Code Section 18615(b). An expense for a good or service is incurred by the lobbyist if the lobbyist "makes the primary decision on where, whether, or how any good or service used by the lobbyist in connection with his lobbying activity is acquired or used...." 2 Cal. Adm. Code Section 18615(a)(6). Under that regulation, a lobbyist is required to report as an expense incurred by him the salary paid to his employer's employee if the lobbyist makes the primary decision as to how that employee's services will be used.

the entity in connection with that employee's lobbying efforts are attributable to the employee for purposes of determining whether that employee is a lobbyist.

Under the Act's definition of "lobbyist" in Section 82039, one can become a lobbyist by engaging in activity either directly or through agents for the purpose of influencing legislative or administrative action. In 2 Cal. Adm. Code Section 18239(c) the Commission has defined agents as:

... those persons who act under the direct supervision or direct orders of another person to accomplish the specific goals of that person.

Therefore, if the agent or employee of the entity is engaged in activity for the purpose of influencing legislative or administrative action and that activity is performed under the direct supervision or direct orders of another employee in order to aid or promote that employee's lobbying activity, the activities of the agent or supervised employee are attributable to the directing employee.

Approved by the Commission on October 3, 1978.  
Concurring: Lowenstein, McAndrews, and Quinn. Commissioners Lapan and Remcho were absent.

  
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Daniel H. Lowenstein  
Chairman